

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EDGAR AGUILAR,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, FERNANDO  
ALVAREZ, and BRIAN TAYLOR,

Defendants.

Case No. 1:23-cv-01512-HBK (PC)

ORDER GRANTING PLAINTIFF'S MOTION  
(Doc. No. 10)

ORDER DIRECTING CLERK TO DOCKET  
PLAINTIFF'S LODGED "SECOND  
AMENDED COMPLAINT"

(Doc. No. 10 at 8-16).

Plaintiff Edgar Aguilar ("Plaintiff") is a state prisoner proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. On November 30, 2023, the Court screened Plaintiff's initial Complaint and found that it failed to state a claim. (Doc. No. 7). The Court afforded Plaintiff the option to either (1) file an amended complaint, (2) file a notice to stand on his complaint subject to the undersigned recommending the district court dismiss the Complaint, or (3) file a notice of voluntary dismissal. (*Id.* at 6-7). On December 14, 2023, the Clerk received and docketed Plaintiff's First Amended Complaint. (Doc. No. 8). On February 16, 2024, prior to the Court screening the First Amended Complaint, Plaintiff filed a Motion requesting permission to file a new first amended complaint. (Doc. No. 10, "Motion"). Plaintiff attaches a proposed amended complaint to his Motion. (*Id.* at 8-16). It appears Plaintiff filed the First Amended Complaint before he received the Court's November 30, 2023 Screening Order

1 and wishes to substitute the attached amended complaint in place of the First Amended  
2 Complaint that was docketed on February 16, 2024.

3 Federal Rule of Civil Procedure 15 permits a party to file an amended complaint once as a  
4 matter of course no later than: (A) 21 days after serving it, or (B) if the pleading is one to which a  
5 responsive pleading is required, 21 days after service of a responsive pleading or 21 days after  
6 service of a motion under Rule 12(b), (e), or (f), whichever is earlier. Fed. R. Civ. P. 15(a)(1). A  
7 pro se litigant is entitled to an opportunity to amend their complaint before dismissal of the  
8 action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc). The Court will  
9 grant the Motion and direct the Clerk of Court to accept the amended complaint Plaintiff attaches  
10 to his Motion (Doc. No. 10 at 8-16). The Court will deem this later filed complaint the operative  
11 complaint in this matter. For purposes of clarification, the Court will retitle the proposed  
12 pleading as Plaintiff's "Second Amended Complaint" and will screen it in due course.

13 Accordingly, it is hereby **ORDERED**:

- 14 1. Plaintiff's Motion (Doc. No. 10) is **GRANTED**.
- 15 2. The Clerk of Court is directed to accept the proposed first amended complaint contained  
16 within Plaintiff's Motion (Doc. No. 10 at 8-16) and shall docket it as a separate pleading  
17 and retitle it "Second Amended Complaint."
- 18 3. The Court deems the Second Amended Complaint the operative complaint in this matter  
19 and will screen it in due course.

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21 Dated: March 5, 2024

  
22 HELENA M. BARCH-KUCHTA  
23 UNITED STATES MAGISTRATE JUDGE  
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